

Internal Revenue Service  
**memorandum**

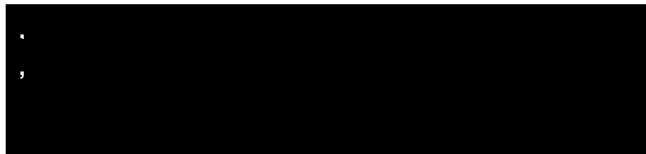
date: **APR 17 1991**

TO: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

FROM: Technical Assistant  
Employee Benefits and Exempt Organizations

SUBJECT: CC:EE:3 - TR-45-242-91  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated February 12, 1991, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from  
the Railroad Retirement Board

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

**08686**

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

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BUREAU OF LAW

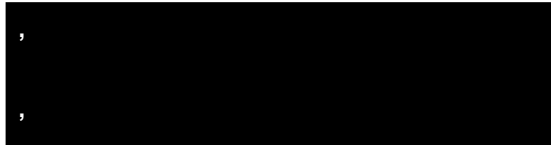
Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

FEB 12 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script that reads "Steven A. Bartholow".

Steven A. Bartholow  
Deputy General Counsel

Enclosure

0284B

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

**MEMORANDUM****L** [REDACTED]

FEB 04 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]  
Employer Status

This is in reply to your request for my opinion as to the status of the [REDACTED] as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence in file indicates that the [REDACTED] was incorporated [REDACTED], and [REDACTED] apparently obtained immediate control of the [REDACTED]. In a series of transactions in [REDACTED], [REDACTED] formed the [REDACTED], the [REDACTED], and the [REDACTED]. All four of the abovementioned railroads have been determined to be employers under the Acts, with service creditable in the case of the [REDACTED] from [REDACTED]. Currently, [REDACTED] owns [REDACTED] percent of all stock in these companies, and derives [REDACTED] percent of its revenue from the earnings of the four railroad subsidiaries, which together operate an estimated [REDACTED] miles of track.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) provides in pertinent part as follows:

"The term "employer" shall include--

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad

\* \* \*."

Director of Research and Employment Accounts

A similar provision is contained in section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)).

Section 202.5 of the Board's regulations (20 CFR 202.5) defines a company under common control with a carrier as one controlled by the same person or persons which control a rail carrier. The Board has determined that a parent company may be under common control with its subsidiaries within the terms of this provision. See Appeal of Itel Corporation, Board Order 82-140, reversed on other grounds, Itel Corporation v. United States Railroad Retirement Board, 710 F. 2d 1243 (7th Cir. 1983).

Section 202.7 of the regulations (20 CFR 202.7) further defines a service as in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations. Finally, section 202.6 (20 CFR 202.6) provides that a service which is insubstantial is casual service under the Acts.

As sole owner of four rail carrier subsidiaries, [REDACTED] meets the requirements of common control under the Acts. However, the evidence does not reflect that [REDACTED] performs functions other than as a medium for ownership of the four railroad subsidiaries and for distribution of their combined earnings. [REDACTED] has no full time employees and is merely a holding company. The evidence in file establishes that at most [REDACTED] performs a casual service in connection with the rail carrier operations of its four railroad subsidiaries. Therefore, it is my opinion that the [REDACTED] is not an employer under the Acts.

A form G-215 giving effect to the foregoing is attached.

*Steven A. Bartholow*

Steven A. Bartholow

Attachment